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IN THE

Supreme Court of the United States.

No. 51.

ANN E. J. CRUIT, APPELLANT,

vs.

KATE DEAN OWEN ET AL.

BRIEF FOR APPELLEES.

CHAPIN BROWN,
J. P. EARNEST,
For Appellees.

LAW REPORTER PRINTING CO., WASHINGTON, D. C.

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ANN E. J. CRUIT, APPELLANT,

vs.

KATE DEAN OWEN ET AL.

BRIEF FOR APPELLEES.

The statement of the material facts involved in this appeal are briefly but sufficiently stated in the amended bill of complaint contained in the printed record at pages 1 to 7, and the material facts are admitted by the answer of the appellant (printed Rec., pp. 12, etc.) and need not now be repeated, but will be more particularly referred to hereinafter. A previous bill of complaint filed in this cause below was demurred to by the appellant (defendant below), but the demurrer was withdrawn by leave of the court at the time of the hearing of the same. The amended bill was then filed and was duly answered by all of the defendants and issue joined, and after some testimony was taken, but which sheds no light upon the questions involved in this appeal, the court below, upon final hearing, passed the decree appealed from (printed Rec., pp. 48, etc.).

The principal question before the court is the meaning and proper construction of the will of the late Robert Cruit.

The question of jurisdiction at first raised by the demurrer of the appellant, Ann E. J. Cruit, has been eliminated by the withdrawal of that demurrer, under leave of the court below, and the filing of answers and joinder of issue.

The Contention of the Appellees.

First, it is plain that the testator intended to, and did in fact, dispose of his whole estate by his will.

Second, that the testator gave to his daughters only *life* interests in his real estate; that is, portions of the *net* income arising from the estate during their respective lives only.

Third, that the testator gave to his grandchildren the fee simple title in remainder of all his real estate.

Fourth, that the testator created a trust estate to so continue and be managed by a trustee until the death of all his daughters.

(1). As to the first proposition above stated there can be no doubt. The testator says (printed record, bottom of p. 2):

> "And all the rest, residue and remainder of my estate, real, personal and mixed, whatsoever and wheresoever situated, I give, devise and bequeath unto my dear daughter, Susan Cruit, her heirs, executors and administrators upon the following trusts, to wit."

The testator devised and bequeathed his whole estate.

> Smith *vs.* Bell, 6 Pet., 68; Law Ed. 8, 322.
> Given *vs.* Hilton, 95 U. S., 591; Law Ed. Bk. 24, 458.

In the next above cited case the construction of the will of the late John P. Hilton, of New York, was involved. The language used by the testator in the Hilton

case was similar to the language above quoted, and in construing such language this court said in the Hilton case, speaking through Mr. Justice Strong (at p. 594):

> "The law prefers a construction which will prevent a partial intestacy to one that will permit it, if such a construction may reasonably be given (citing Vernon *vs.* Vernon, 53 N. Y., 351); and certainly when, as in this case, the intent to make a complete disposition of all the testator's property is manifest throughout his will, its provisions should be so construed, if they reasonably can be, as to carry into effect his general intent."

(2). The daughters of the testator, Robert Cruit, under the plain language of the will took life interests only in his real estate. The language used is (printed record, p. 3)—

> "in trust, as to my real estate for my dear daughters . . . for and during *their respective lives*. . . . And if any of my said daughters shall die without having been married, her share shall pass to her or their surviving sisters or sister *for life* equally."

Even if the language were not so strong and so plain in giving the daughters only a life estate, yet there being no words of limitation to the devise to them they would take an estate for life only.

Jarman on Wills, star page 1131.

Wright *vs.* Page, 10 Wheat., 204; Law Ed. 6, 303.

King *vs.* Ackerman, 2 Black., 408; Law Ed. 17, 292.

In the last above cited case this court, through Mr. Justice Story, said (bottom p. 227):

> "Where there are no words of limitation to a devise, the general rule of law is, that the devisee takes an estate for life only, unless from the language there used, or from other parts of the will, there is a plain intention to give a larger estate."

(3). It is equally clear from the language used in the will that the grandchildren took the fee simple title in remainder in all the real estate. The language used is (printed record, p. 3):

> "And from and after their death in trust for the child or children of each of my said daughters then living *in fee simple.*"

It is only in reference to the estate, which the grandchildren take under the will, that the testator uses the words "fee simple." At the time of the making and execution of his will by Robert Cruit, and at the time of his death, his daughter, Catherine E. Owen, was married and had children living, who were grandchildren of the testator, Robert Cruit, and who are still living and appellees in this suit, and under the plain language of the will and of the adjudged cases, the fee simple title of all the real estate devised by the will vested in them in remainder, at the death of the testator, subject to be opened to let in any after-born children of any of the daughters of the testator.

McArthur *vs.* Scott, 113 U. S., 340; Law Ed. 28, 1015.

Croxall *vs.* Sherrerd, 5 Wall., 268; Law Ed. 18, 572.

Poor *vs.* Considine, 6 Wall., 458; Law Ed. 18, 869.

Daniel *vs.* Whartenby, 17 Wall., 639; Law Ed. 21, 661.

Cropley *vs.* Cooper, 19 Wall., 167; Law Ed. 22, 109.

In the above-cited case of McArthur *vs.* Scott, 113 U. S., 340, it is held that, under a devise of an estate, legal or equitable, to the testator's *children for life*, and to be divided, upon or after their death, among his *grandchildren in fee*, the grandchildren living at the

death of the testator take a *vested remainder* at once, *subject to open* and let in after-born grandchildren, although the number of grandchildren who will take and, consequently, the proportional share of each, can not, of course, be ascertained until the determination of the particular estate by the death of the parents.

The above construction, as asked by the appellees, needs no other authorities to sustain it than those above cited. But yet the rules of construction, as laid down by the text writers, of certain expressions used in wills and deeds, all bear out and uniformly sustain the above construction asked and contended for by the appellees.

First, it is said by Jarman:

> "It seems, therefore, that, although words as they stand are not absolutely senseless or contradictory, *transportation will be made*, if it be required to effectuate the intention clearly expressed or indicated by the context," and citing and explaining at length the transportation made in the case of Eden *vs.* Wilson, 1 Ex. 772; 14 Q. B. 256; 4 H. L. Ca. 257.
>
> 1 Jarman on Wills, star p. 468.
>
> See, also, as to the *Transportation of Words and Causes*, 1 Jarman on Wills, star p. 465.

Applying then the next above well settled rule of construction to the will in question, it is plain that the following words used in the will, namely: "After paying taxes, repairs, and insurance," should be transposed and should follow immediately after the words "upon the following trusts, to wit," so that, without taking from or adding any word, to the will, the whole will should read as follows:

And all the rest, residue, and remainder of my estate, real, personal, and mixed, whatsoever and wheresoever situated, I give, devise, and bequeath unto my dear daughter Susan Cruit, her heirs, executors, and administrators upon the following trusts, to wit, after paying

taxes, repairs, and insurance, in trust for my dear wife Catherine, for and during her life and to permit her to receive and take the whole income thereof and to apply and dispose of such net income as she, my said wife, may think proper, and from and after her decease in trust as to my real estate for my dear daughters, Catherine E., the wife of Samuel Owen; Ann Cruit, Louisa Cruit and herself the said Susan Cruit, equally share and share alike, for and during their respective lives for their own sole and separate benefit, free from the control of the husband of my said daughter Catherine and any husband or husbands she or my said other daughters or any of them may hereafter happen to marry, and not to be liable in any way for the debts of any such husbands, the receipts of my said daughters alone being a valid discharge, and from and after their death in trust for the child or children of each of my said daughters then living in fee simple, such child or children respectively to take the share to which his, her, or their parent was entitled (at the death of such parent), and if any of my said daughters shall die without having been married (and without leaving children by such marriage) her share shall pass to her or their surviving sisters or sister for life equally; and upon her or their death the same shall vest in her or their child or children in the same manner and for the same estate and pass on her or their death as her or their original shares or share.

. . . . . .

And if my said daughter, Susan Cruit, shall die or from any cause should become unable to act in the trust, I direct that a trustee shall be appointed by the Circuit Court *so that the trusts hereby created shall be at all times preserved and carried into effect.*

The Meaning of the Word "THEIR" Used in the Will.

It has been suggested that the phrase "their death" used in the clause "and from and after their death in trust for the child or children of *each* of my said daughters," etc., means the death of the last survivor of the four daughters, in this case the appellant, Ann E. J. Cruit, and that consequently the three remaindermen. the three appellees, are not entitled to any benefit in the estate until the death of the appellant, Ann E. J. Cruit. But the language in the other parts of the will negatives this claim of the appellant, Ann E. J. Cruit (defendant below), especially the language subsequently used, namely, the phrase "*at the death of such parent.*" So that under the rule cited above from Jarman on Wills at star page 465, as to the transportation of words and clauses, and without adding or omitting any word used by the testator, this particular provision of the will reads: "such child or children respectively to take *at the death of such parent* the share to which his, her, or their parent was entitled," etc. And the claim of the appellant, Ann E. J. Cruit (defendant below), that she is entitled to the whole estate until her death, is again conclusively negatived and denied by the further provision of the will in the following language, namely:

> "And if any of my said daughters shall die without having been married her share shall pass to her or their surviving sisters for life equally."

It will be. therefore, conclusively seen from this provision of t[illegible]l that the appellant, Ann E. J. Cruit, could have taken as an implied cross-remainder the share that the daughter, Catherine E. Owen, had at the time of her death, only in case she, Catherine, died without having been married. But such was not the case.

Catherine was married and left children, namely, the appellees, Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall, so that Catherine's share at the time of her death (one-half of the estate) passed in the enjoyment or possession thereof to her three daughters, the three appellees.

But if there had not been any other language in the will to explain this word "their," yet it would necessarily have to be construed as reading or meaning "their respective deaths." A case in point and one cited by all the leading text writers, is the case of Wills *vs.* Wills, L. R. 20, Eq. 342. In this next above cited case the language used was the same in effect as the particular language used in the Cruit will, and the court held that the language, "their death," could not refer to the death of all, but to the death of each *respectively*. That if the testator had meant the death of all he must have said "after the death of the survivor of them;" and this he could not have meant because "the death of the survivor" would not be or mean "their death," but his or her death; that in order to have the language "their death" mean the death of all, the testator must have contemplated the death of all at one and the same time, and this was an unreasonable construction.

See, also, on this question of construction—

1 Jarman on Wills, 6th Am. Ed., by Bigelow, star page 470.

But it is well settled that where, as in this Cruit case the children or other devisees of a testator take for life as *tenants in common*, with remainder over to *"their"* children, the children of the life tenants take *immediately* upon the death of each life tenant, *per stirpes*, that is the share of the parent respectively. There is no exception to this rule.

2 Jarman on Wills, bottom star page 1052, and top of star page 1053.

"This question often arises upon devises or bequests to two or more persons for their lives, with remainder to their children. The conclusion then depends in a great measure upon whether the tenants for life take jointly or as tenants in common. If the latter, then, as the share of any one will, on his decease, go over immediately, without waiting for the other shares, it is probable that the testator intended it to continue separate and distinct from the other shares, and consequently to devolve on the children per stirpes. If otherwise, then it would follow that the different shares would go to different classes of children; for, after the death of the tenant for life who first died, another might have more children, who would be entitled to participate in a share of any tenant for life who died afterwards."

The daughters of Robert Cruit took separate life estates, as *tenants in common* and not as joint tenants.

The language of the will, namely, "equally share and share alike," creates a tenancy in common.

Jarman on Wills, 6 Am. Ed., by Bigelow, star page 1121, et seq.
Schouler on Wills, 3d Ed., sec. 566.
Barribean *vs.* Brunt, 17 How. 43, Law Ed. 15, 34.

Each daughter of Robert Cruit took at the time of his death a *life estate*, as *tenant in common*, with the others in one-fourth each of the real estate, with the possibility of the life estate being increased by express cross-remainders, if any one or more daughters died without leaving a child or children.

McAleer *vs.* Schneider, 2 App. D. C. 461.
Wright *vs.* Page, 10 Wheat. 204, Law Ed. 6, 303.
Kind *vs.* Ackerman, 2 Black, 408, Law Ed. 17, 292.
Jarman on Wills, 6 Am. Ed., by Bigelow, star page 1131, et seq.

Jarman (star page 1131) says:

> "Nothing was better settled than that a devise of messuages, lands, tenements, or hereditaments (not estate), without words of limitation, occurring in a will which was not subject to the statutes of 1 Vict. C. 26, conferred on the devisee an estate for life only."
>
> Citing both English and American cases.

If then, the daughters each took as tenants in common, their shares passed to their children immediately on their respective deaths under this well settled rule of property, and the share of Catherine E. Owen passed to her children, the appellees, Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall, and was not suspended until the death of the appellant, Ann E. J. Cruit.

Below, the principal contention made on behalf of the appellant, was that she was entitled to the whole income under the doctrine of *implied* cross-remainders. But in all the cases cited on behalf of this contention it will be observed that the language used in the wills where the doctrine of *implied* cross-remainders was held to apply, was such as "after the death of *all*," or "after the death of the *survivor*" or "after the death of A. *and* B.," and similar expressions, where the remainderman or remaindermen *could not* take under the plain language and intent of the testator, until the death of *all* of the life tenants. The doctrine or principal in such cases *has* to be applied in order to carry out the *intention* of the testator as gathered by implication from all the provisions of the will. But this doctrine or principle is never applied when it would manifestly defeat the intention plainly expressed as in the case now under consideration. And it has also been held, " that cross-remainders could

not be *implied* where there were *express* cross-limitations among the devisees in tail in certain events."

Jarman on Wills, star p. 1553; citing Clache's case Dy. 330, b.

A case not decided by an appellate court, but which, nevertheless, is of weight in the consideration of the questions now under discussion, as having involved the proper construction of the will of the said testator, Robert Cruit, deceased, is the case of Great Falls and Dominion Ry. Co. *vs.* Catherine E. Owen and others, decided by the County Court of Alexandria County, Virginia. Certified copies of all of the proceedings had therein and the decision of the court thereon are attached to this brief as an appendix. This case necessarily involved the proper construction of the will of Robert Cruit, deceased, and in that case the court of Alexandria County took the same view and decreed the same construction as the court below took in the present case. All of the parties interested, including the present appellant, were before the court of Alexandria County, Virginia. The case referred to was decided since the present suit was instituted in this District.

The next question to be determined is:

"Is this at the present time a trust estate?"

We again refer to the authorities above cited, that the intention of the testator should govern, if such intention does not controvert any fixed rule of law. Let us then first examine the will to see what the plain intention of the testator was.

It is apparent that the testator, Robert Cruit, intended that there should, at all times, be a trustee of

his estate under his will, until all the trusts created by his will should have been carried out. The language of his will on this point is:

> "And if my said daughter, Susan Cruit, now deceased, should die or from any cause should become unable *to act in the trust*, I direct that *a trustee shall* be appointed by the circuit court so that the trusts hereby created shall be at all times preserved and carried into effect" (Printed Record at bottom of page 3).

It will, therefore, be seen that the testator not only required that there should continue to be a trustee, but he also required that the court should appoint such trustee. It will be noted further that he did not designate any other daughter to act after the death or refusal of the said Susan T. Cruit, now deceased. It must be presumed that he had good and sufficient reasons for making this omission and provision and that his intention as expressed should be carried out. The reasons therefor appear in the record and will be referred to and pointed out in oral argument.

That there is just as much a necessity of a trustee of the estate under the will *at the present time* as there was *immediately after the death of the testator, Robert Cruit*, there can be no doubt. He intended that it should be a trust estate until all of the trusts created should be "carried into effect," as above set forth. Have, then, all of the trusts been "carried into effect?" It will be seen by an examination of the will, that the real estate was to be held *in trust* for the four daughters of the testator, "for and during *their respective lives.*" That is, the daughters, including the defendant, Ann E. J. Cruit, were given only a *life estate*, but with the further provision that "if any of my said daughters shall die without having been married her share *shall* pass to her or their surviving sisters or sister *for life equally;*

and upon *her* or their death the same *shall vest* in *her* or their child or children in *fee simple.*" There is a clear distinction made by the testator between the character of the life estates of the daughters, which life estates are made trust estates, and the estates of the grandchildren which are made estates in fee simple. It will be noted, as alleged in the bill of complaint, that two of the daughters died "without having been married," and by general acquiescence with the plain provisions of the will, their shares passed to the said Catherine E. Owen, now deceased, and the said appellant, Ann E. J. Cruit, so that *the whole equitable estate* thus passed to the said Catherine E. Owen and the said Ann E. J. Cruit for life; that is, one-half thereof to said Catherine E. Owen and one-half thereof to the said Ann E. J. Cruit. But the said Catherine E. Owen did not die without having been married, and did not die without having and leaving children, but left surviving her her said children, the appellees, Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall; so that, under the plain provisions of the will, the *one-half* share of the whole estate did "vest" "in fee simple" (using the language of the will) in the three appellees, Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall; and who now hold the equitable fee of the whole real estate, subject only to the right of the appellant, Ann E. J. Cruit, to one-half ($\frac{1}{2}$) of the income thereof for her life. But while this equitable fee to the whole of the real estate is now in these three beneficiaries, according to the plain provisions of the will (the words being evidently used to indicate an absolute and unqualified devise to them), yet it is, nevertheless, provided by said will that the said Susan T. Cruit, trustee, or someone appointed by the court in her place, should still hold the said estate in trust, in order to manage the estate, keep up repairs, insurance, etc., and

divide the rents between the life tenants and remaindermen.

There are many things required of a trustee to do, while the whole estate is held intact. There are many different pieces and parcels of property under rental, repairs are to be made, tenants obtained, rents collected, taxes paid, insurance kept up, and in the matter of insurance it is doubtful whether the property can be kept properly and legally insured without the appointment of a trustee. In whose name is the property to be insured in order to protect the cestui que trust? A trustee should be under bond to carry out these trusts and duties, and it was evidently the intention of the testator that in case the said Susan T. Cruit, trustee, should die, that the *court* should take charge of the trusts and manage the same by its proper officers or trustees for the benefit of the beneficiaries.

It is, in conclusion of this branch of the case, submitted that this is a case where a trustee is required to be appointed, not only by the ordinary principles of equity, but by the express direction of the testator expressed in his last will and testament, the trusts not having been fully "carried into effect," the appellant, Ann E. J. Cruit, still being entitled during her life to one-half of the net income and revenue of the estate.

But the well-established principles of law in reference to *trust estates* show that this is still a trust estate.

In Hill on Trustees, under the heading "Of the Estate of Trustees," it is said, at star page 232 :

> "So where there is a gift of real estate to trustees, with direction to convey, or *to pay the rents and profits* to certain persons; or to receive the rents and apply them for the maintenance of an individual *during his life;* or to pay an annuity out of the rents *to a person for life;* or *after de-*

ducting rates, *taxes, repairs*, and expenses, to pay every year such clear sum as should remain to A. B.; in all these cases it has been held, that the seisen or possession of the legal estate is requisite for the due performance of the duty imposed on the trustees, and consequently, that the persons to whom use is subsequently given, take only a trust or equitable estate."

Hill on Trustees, star page 232.

In Jarman on Wills, vol. 2, Bigelow's Ed., star page 1137, under heading "Estates of Trustees," it is said:

"Great difficulty arises sometimes, however, in deciding whether the trust is passive, as in the case in Heermans *vs.* Robertson, 64 N. Y., 332. But the rule seems to be that if, though apparently passive, it in reality involves the exercise of some active duty, as where the direction is that the trustee shall permit the beneficiary to take the *net* rents or the *clear* rents the statute is excluded and the trustee takes the legal estate."

Citing Perry, sec. 307; Barker *vs.* Greenwood, 4 Mees. & W. 421; Keene *vs.* Deardon, 8 East. 248; White *vs.* Parker, 1 Bing. N. C. 573.

2 Jarman, notes by Bigelow, p. 290, star p. 1139.

"And where the equitable tenant for life is a *female*, that will be an additional reason for the court to continue the trustees in the possession and control of the estate, with a view to her personal protection in case of her marriage."

Hill on Trustees, star p. 273.

"It has been laid down, that in all these cases the question whether the use with the legal estate is executed in the trustees or not, must depend upon the *intention of the devisor*, as collected from the will. . . .

> "In the cases just considered the intention, that the trustees should take the legal estate, was collected and acted upon by the court from the circumstances and nature of the duties imposed upon them by the testator. Any particular expressions attached by the testator to a devise to trustees, will also be taken into consideration as evidence, from which such intention may be collected."
>
> Hill on Trustees, star p. 234.

The wisdom of the testator in devising his real estate in trust, instead of allowing it to be jointly managed by parties interested, has been shown by subsequent events. Susan T. Cruit, the trustee, took immediate possession of the property after the testator's death, and all of the parties interested recognized it for over forty years as a trust estate. After the death of the trustee, Susan T. Cruit, the appellant, Ann E. J. Cruit, filed her bill in equity in the Supreme Court of the District of Columbia, asking the court to appoint a trustees or trustee of the estate under the provisions of the clause in the will of the testator. The court appointed trustees and defined their duties, as provided in the will of the testator, namely, to collect the income and out of the same pay taxes, repairs, and insurance, and pay the net balance over to the parties then entitled thereto.

It is submitted that such construction of the will by decree in that previous suit is *res judicata* of this particular question.

It is respectfully submitted that the decree below should be affirmed.

CHAPIN BROWN,
J. P. EARNEST,
For Appellees.

APPENDIX.

GREAT FALLS AND OLD DOMINION RAILROAD COMPANY,
1413 G Street N. W., Washington, D. C.

Without further or formal notice I hereby agree that the Commissioners appointed by the County Court of Alexandria County, Virginia, on the motion of the Great Falls and Old Dominion Railroad Company to condemn land shall at the hour of 1 o'clock p. m., on the 24th day of January, 1901, go upon the strip of land which is part of the land known as the Cruitt lands in said Alexandria County, Virginia, in which we have an interest, and which said Company proposes to condemn for its said purposes and fix the amount that should be paid therefor by the said Company and any damages that I may be entitled to receive. But I reserve the right to except and object to the report of the Commissioners when the same is presented to the court, and then to be in the same position with respect to the said report as if notice had been regularly served on me before the Commissioners acted. I make this agreement in order to save the expense and without waiving any of my rights. I authorize the holder of this paper to deliver the same to the Commissioners, and I authorize them to attach it to their report.

Given under our hands this 11th day of January, 1901.

CATHERINE E. OWEN.
EMILY A. J. CRUITT.
ERANINA F. MACKALL.
JAMES McV. MACKALL.
KATE DEAN OWEN.
JESSIE OWEN CUGLE.
CHAS. D. CUGLE.

Witness:
T. W. WIDDICOMBE.

We, Curtis B. Graham, John Slater, J. F. Haney, William S. Reed and H. Clay Jones, commissioners duly appointed and qualified, hereby certify that at 1 o'clock p. m. on the 24th day of January they met together on the land of the heirs of Robert Cruitt which is proposed to be taken by the Great Falls & Old Dominion Railroad Company for its purposes and then and there described to us as follows:

> *Beginning* at a stake on the line of Cruitt and Whallon, it being 203.3 feet distant from a stone on said line, said stone being a corner to Whallon and Clark; thence through the Cruitt land S. 79 degrees .09 of a minute, W. 383.7 feet to a stake; thence S. 84 degrees 39 minutes W. 268.9 feet to a stake; thence S. 68 degrees .09 of a minute W. 615 feet to a stake; thence curving to the right 490.1 feet by an arc of a circle with a radius of 746.8 feet to a stake; thence N. 74 degrees 15 minutes W. 260.1 feet to a stake on the W. line of the Cruitt land; thence along that line N. 21 degrees 40 minutes E. 60.3 feet to a stake; thence through the Cruitt land S. 74 degrees 15 minutes E. 253.9 feet to a stake; thence curving to the left 450.7 feet by an arc of a circle W with a radius of 686.8 feet to a stake; thence N. 68 degrees .09 minute E. 615 feet to a stake; thence curving to to the right 280.8 feet to an arc of a circle with a radius of 1462.7 feet to a stake, thence N. 79 degrees .09 minute E. 396.3 feet to a stake on the line of Cruitt and Whallon; thence along that line S. 1 degree W. 61.2 feet to the beginning, bearings magnetic, being a strip of land 60 feet wide with an average length of 2007.5 feet and containing 2.78 of an acre, as shown by the plat hereto annexed.

And upon a view of the land aforesaid and upon such evidence as we had then before us we ascertained that for the said land and for the damage to the residue of the tract beyond the peculiar benefits to be derived in

respect to such residue from the work to be constructed $300 will be a just compensation.

Given under our hands this 24th day of January, 1901.

CURTIS B. GRAHAM.
JOHN W. SLATER.
J. F. HANEY.
WM. S. REID.
H. CLAY JONES.

IN THE COUNTY COURT OF ALEXANDRIA COUNTY, VA., MARCH TERM, 1901.

In the Matter of the Application of the GREAT FALLS & OLD DOMINION RAILROAD COMPANY *to Condemn Land for its Line of Improvement in Alexandria County, Virginia.*

This matter came on this day to be heard upon the report of the commissioners in the case of Catherine E. Owen, Emily A. J. Cruit, Eranina F. Mackall, Jas. McV. Mackall, Kate Dean Owen, Jesse Owen Cugle and Chas. D. Cugle, land owners.

The commissioners having been appointed July 23d, 1900 by an order of this Court and having taken the oath prascribed by law, and it appearing that the President and Directors of the Great Falls and Old Dominion Railroad Company were not and have not been able to agree with the said land owners above named on the terms of purchase of such of the land whereof they are tenants of the freehold as is wanted for the purposes of said Company; and it appearing that notice of the time when the said commissioners met on said land was given said land owners above named as prescribed by law, upon consideration whereof it is ordered that said report be confirmed and recorded and that the Clerk of this Court

do record said report and the accompanying plat in the proper record books of this Court.

And this matter is continued.

IN THE COUNTY COURT OF ALEXANDRIA COUNTY, VA., AUGUST TERM, 1903.

THE G. F. & O. D. RY. Co.
vs.
CATHARINE E. OWEN ET AL.

The Great Falls & Old Dominion Railroad Company is hereby authorized to pay into this court the sum of three hundred dollars, the amount ascertained by the commissioners to be paid in the above entitled proceedings; and it is ordered and adjudged, to enable this court to properly dispose of the same, that Harry R. Thomas, who is hereby appointed a special commissioner of this court, shall ascertain what persons are entitled thereto and in what proportions and report at the next term of this court.

COMMISSIONERS OFFICE, ALEX. CO. CT. H.
Sept. 22nd, 1903.

G. F. & O. D. R. R. Co.
vs.
CATHARINE E. OWEN, ET AL. } Cond. of land.

To the Hon. J. M. LOVE, *Judge of the County Court of Alexandria Co., Va.*

Pursuant to an order of the County Court of Alexandria County, Va., entered at the August term, thereof whereby I am required to ascertain and report what persons are entitled to receive the fund paid into court in the above entitled cause and in what proportion, your commissioner respectfully reports as follows:

A tract of land of which the piece condemned forms a part was devised by Robert Cruit to one Susan Cruit in trust as will fully appear from the following extract from the will of said Cruit.

> "And all the rest, residue, and remainder of my estate, real, personal, and mixed whatsoever and wheresoever situated, I give, devise, and bequeath unto my dear daughter, Susan Cruit, her heirs, executors, and administrators upon the following trusts, to wit: 'In trust for my dear wife, Catharine, for and during her life and to permit her to receive and take the whole income thereof after paying taxes, repairs, and insurance and to apply and dispose of such net income as my said wife may think proper and from and after her decease, in trust as to my real estate for my dear daughter, Catharine E., the wife of Samuel Owens, Ann Cruit, Louisa Cruit, and herself the said Susan Cruit, equally share and share alike for and during their respective lives for their own sole and separate benefit, free from the control of the husband of my said daughter, Catharine, and any husband or husbands she or my said other daughters or any of them may hereafter happen to marry, and not be liable in any way for the debts of any such husbands, the receipts of my said daughters alone being a valid discharge, and from and after their death in trust for the child or children of each of my said daughters, then living in fee simple, such child or children respectively to take the share to which his or her or their parent was entitled, and if any of my said daughters shall die without having been married her share shall pass to her or their surviving sisters or sister for life equally, and upon her or their death the same shall vest in her or their child or chilren in the same manner and for the same estate, and pass on her or their death as her or their original shares or share.'"

Your commissioner further reports that Susan T. Cruit died unmarried; that Louisa Cruit died unmarried, leaving Catherine E. Owen, who had intermarried with one Sam-

uel Owen and E. A. J. Cruit, called in the will Ann Cruit, and under the terms of the will the whole estate, for life vested in them.

That subsequently about the year 1902, Catharine E. Owen, departed this life leaving surviving her three children as follows: Evania F. Mackall, who has intermarried with one James McV. Mackall, Jesse Owen Cugle who has intermarried with one Charles D. Cugel, and Kate Dean Owen unmarried.

Therefore at this date there are living E. A. J. Cruit who is entitled to a life interest in one-half of the fund, and three children above named who are entitled to receive the other half absolutely as follows:

One-sixth of the said fund to Evania F. Mackall.

One-sixth of said fund to Jessie Owen Cugle.

One-sixth of the said fund to Kate Dean Owen, making one half of the fund.

The above half should be invested so that in accordance with the terms of the will the income therefrom may be paid to the said E. A. J. Cruitt, and the principal distributed under the terms of said will upon the death of the said E. A. J. Cruit, less all costs allowed by law.

There are no liens upon the said land of record.

Respectfully submitted,

Fee $7.50 HARRY R. THOMAS, Special Comr.

IN THE COUNTY COURT OF ALEXANDRIA COUNTY, VA., SEPT. TERM, 1903.

GREAT FALLS & O. D. RY. CO. *vs.* CATHARINE E. OWEN, ET AL. } Condemnation of Land.

This cause coming on to be heard this 6th day of October, 1903, upon the papers heretofore read and upon the report of Special Commissioner H. R. Thomas, filed in this cause, and no exception being made thereto upon argument of counsel, it is adjudged and ordered, that

the said report be and the same is hereby confirmed and the money heretofore paid into Court is ordered to be disbursed and invested in accordance with said report less proper costs and charges.

And this cause is ordered stricken from the docket.

In re condemnation

G. F. & O. D. R. R. Co.
vs.
CATHARINE E. OWEN ET AL.

The undersigned, Emily A. J. Cruit, described in the will of Robert Cruit as Ann Cruit, does hereby consent and request that the sum of three hundred ($300) dollars paid into Court in said cause and her share and interest in the same, whatever it may be, be paid and distributed by the Court to her nieces, Evania F. Mackall, Kate Dean Owen, and Jesse Owen Cugle, to whom the undersigned hereby releases all her interest in said fund of three hundred ($300) dollars.

EMILY A. J. CRUIT. [SEAL].

October 29, 1903.

Witness:

H. R. THOMAS,

HENRY CROCKER.

IN THE COUNTY COURT OF ALEXANDRIA COUNTY, VA.

NOVEMBER TERM, 1903.

G. F. & O. D. R. R. Co.
vs.
CATHARINE E. OWEN ET AL.

It appearing to the Court from a paper filed in this cause that E. A. J. Cruit has relinquished all claim upon the fund paid into court in the above case, to the remainderman the clerk is directed to pay the said money, in accordance therewith.

A Copy. Teste: GEO. H. RUCKER,
Clerk.

Authentication of Record.

Clerk's Certificate.

CLERK'S OFFICE, COUNTY COURT OF THE COUNTY OF ALEXANDRIA, VA.:

I, George H. Rucker, Clerk of the said Court, do hereby certify that the writings annexed to this Certificate are true copies of originals on file and of record in said office; and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this seventh day of December, 1903.

[SEAL] GEO. H. RUCKER, *Clerk.*

Judge's Certificate.

I, J. M. Love, Judge of said Court, do certify the foregoing attestation by Geo. H. Rucker, Clerk of the said Court, to be in due form.

Witness my hand and seal this 9th day of December, 1903.

J. M. LOVE, *Judge.* [SEAL].

Clerk's Certificate to Judge's Official Character.

I, Geo. H. Rucker, Clerk of said court, hereby certify that J. M. Love, whose genuine signature is here subscribed to the following certificate, was, at the time of signing and attesting the same, Judge of said court, duly commissioned and qualified.

Witness my hand and the seal of said Court this 10th day of December, 1903.

[SEAL] GEO. H. RUCKER, *Clerk.*